

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SAN RAFAEL CITY SCHOOLS

OAH Case No. 2015070326

ORDER GRANTING IN PART
MOTION FOR STAY PUT

On July 13, 2015, Student filed a motion for stay put. On July 16, 2015, District filed an opposition on the ground that Student resides in Richmond, California and, therefore, is not a resident of San Rafael City Schools. On July 22, 2015, Student filed a reply to City Schools' opposition, and OAH issued an order for additional information on motion for stay put. In response, on July 27, 2015, City Schools filed a declaration of Amy Baer, City Schools' Executive Director of Student Support Services, and on July 30, 2015, Student filed a declaration of Student's mother; declaration of Student's older brother; declaration of Frank Guevara, resident manager for an apartment complex in San Rafael, California; and a joint declaration of Mr. and Mrs. C., parents of Student's brother's girlfriend.

If Student has matriculated from 8th to 9th grade, then Student's current physical address falls within the jurisdiction of the San Rafael High School District, which is governed by San Rafael City Schools.

APPLICABLE LAW

Stay Put

Until due process hearing procedures are complete, a special education student is entitled to remain in his or her current educational placement, unless the parties agree otherwise. (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a) (2006); Ed. Code, § 56505 subd. (d).) This is referred to as "stay put." For purposes of stay put, the current educational placement is typically the placement called for in the student's individualized education program, which has been implemented prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.)

In California, "specific educational placement" is defined as "that unique combination of facilities, personnel, location or equipment necessary to provide instructional

services to an individual with exceptional needs,” as specified in the IEP. (Cal. Code Regs., tit. 5, § 3042.)

Courts have recognized, however, that because of changing circumstances, the status quo cannot always be replicated exactly for purposes of stay put. (*Ms. S ex rel. G. v. Vashon Island Sch. Dist.* (9th Cir. 2003) 337 F.3d 1115, 1133-35.) Progression to the next grade maintains the status quo for purposes of stay put. (*Van Scoy v. San Luis Coastal Unified Sch. Dist.* (C.D. Cal. 2005) 353 F.Supp.2d 1083, 1086 [“stay put” placement was advancement to next grade]; see also *Beth B. v. Van Clay* (N.D. Ill. 2000) 126 F. Supp.2d 532, 534; Fed.Reg., Vol. 64, No. 48, p. 12616, Comment on § 300.514 [discussing grade advancement for a child with a disability].)

Residency

Under the Individuals with Disabilities Education Act, local educational agencies are charged with “providing for the education of children with disabilities within its jurisdiction.” (20 U.S.C. § 1413(a)(1).) California law requires students to attend the public school “in which the residency of either the parent or legal guardian is located.” (Ed. Code, § 48200.) Residency under the IDEA is measured by “normal standards.” (*Union School Dist. v. Smith* (1994) 15 F.3d 1519, 1525.) In California, Government Code section 244 lists “the basic rules generally regarded as applicable to domicile [legal residency].” (*Fenton v. Board of Directors* (1984) 156 Cal.App.3d 1107, 1114.)

Government Code, section 244, states in relevant part:

In determining the place of residence [domicile] the following rules shall be observed:

(a) It is the place where one remains when not called elsewhere for labor or other special or temporary purpose, and to which he or she returns in seasons of repose.

(b) There can only be one residence.

(c) A residence cannot be lost until another is gained.

(d) The residence of the parent with whom an unmarried minor child maintains his or her place of abode is the residence of such unmarried minor child. [¶] . . . [¶]

(f) The residence can be changed only by the union of act and intent.

DISCUSSION

Student's Last Agreed Upon and Implemented IEP

During the 2014-2015 regular school year, Student, age 14, attended the 8th grade at Davidson Middle School within the San Rafael Elementary School District. Student's last agreed upon and implemented annual IEP, dated January 28, 2015, includes a page entitled "Offer of FAPE¹ – SERVICES," which has headings entitled "SPECIAL EDUCATION and RELATED SERVICES," and "EXTENDED SCHOOL YEAR (ESY)." As to special education and related services, the IEP offered Student 780 minutes per week of small group, specialized academic instruction, consisting of two periods of "reading intervention" and one period of "academic support" to be implemented by "resource specialists" in a separate classroom in a public integrated facility, beginning January 28, 2015 through January 28, 2016. The IEP did not define the meaning of "academic support."

The IEP Team Meeting Notes state that Student "attends individual counseling 1x week and family counseling 1x week. [Student] was encouraged to be open with his counselor concerning his negative behavior at school." However, these counseling services were *not* written in the special education and related services grid of the IEP, and Student did not identify or request any counseling services as part of his stay-put placement.

As to Extended School Year services, the IEP simply consists of a box checked "No." Student offered credible evidence that on or about June 15, 2015, District mailed Student an invitation to attend the 2015 BELL Summer Program² at Davidson Middle School, beginning June 22 and ending on July 24, 2015. However, the July 23, 2015 declaration of City Schools' Executive Director of Student Support Services Amy Baer provides that the BELL program is a general education program, involving a partnership between City Schools and BELL, a nonprofit organization, providing intensive, academic instruction to at-risk students in grades 5 through 8. Accordingly, there is a factual dispute as to whether Student's January 28, 2015 IEP offered any ESY services during the summer of 2015 and, as a practical matter, the time period for implementing the BELL program has expired.

Based on the undisputed facts in the record as of the date of this order, Student's stay-put placement for the 2015-2016 regular school year consists of 780 minutes per week of small group, specialized academic instruction, consisting of two periods of reading instruction and one period of academic support to be implemented by resource specialists in a separate classroom in a public integrated facility. As discussed below, the school district responsible for the implementation of Student's stay-put placement depends upon whether he has matriculated from middle school to high school.

¹ FAPE stands for "free appropriate public education."

² BELL stands for Building Educated Learners for Life.

*Residency*³

San Rafael City Schools consists of the San Rafael Elementary School District and the San Rafael High School District, which are governed by one school board and one district office administration. The San Rafael High School District provides secondary education to students residing in San Rafael Elementary School District and Dixie School District. The San Rafael High School District has two comprehensive high schools, San Rafael High and Terra Linda High, and an alternative high school, Madrone High School.

Student contends that his mother has two addresses in San Rafael; one is a mailing address, and the other is a physical address. Student's mother uses a different mailing address to protect the safety and privacy of Student, Student's older brother and mother from Student's father and mother's ex-husband based on a Restraining Order, dated March 26, 2013, a copy of which was not provided as part of Student's moving papers.

Student's motion and District's opposition were supported by persuasive evidence that Student's current physical address falls within the jurisdiction of the San Rafael High School District, assuming that Student has matriculated to 9th grade. First, Frank Guevara, resident manager of an apartment complex in San Rafael, signed a declaration under penalty of perjury, dated July 28, 2015, stating that Student has resided with his mother and brother at the same apartment complex since December of 2013.⁴ Mr. Guevara's declaration identifies the physical address of the apartment complex, which is identical to the address referenced in Student's motion for stay put at page 13, line 23. Second, Student's mother signed an affidavit of residency under penalty of perjury, dated June 12, 2015, stating that she resides with Student and his brother at the physical address identified in Mr. Guevara's declaration and in Student's motion.⁵ Third, Student's mother signed a declaration under penalty of perjury, dated July 28, 2015, stating that since December of 2013, she has resided with Student and his brother at the apartment complex identified in Mr. Guevara's declaration. Fourth, the zip code for the apartment complex's address falls within the jurisdiction of the San Rafael High School District according to the California Department of

³ The final determination as to Student's residency shall be made in the administrative hearing based on the evidence presented by the parties. Any determination in this order is for purposes of determining stay put during the pendency of this matter only to maintain the status quo.

⁴ To protect Student's and Student's mother's privacy, the physical address is not referenced in this order.

⁵ There is a slight discrepancy between the name of the street referenced in Mr. Guevara's declaration (two words) and mother's affidavit (one word), but the street number and zip code are identical, and Student's motion at page 13, line 23, states the full street name, consistent with Mr. Guevara's declaration.

Education's Public School Directory. Similarly, City Schools' website provides a link to the San Rafael High School District, explaining that the high school district is "open enrollment district, which means that any student who lives within San Rafael may choose to attend either San Rafael High School or Terra Linda High School."

While City Schools correctly points out that the "San Rafael City Schools Street Listing" indicates that Student's physical address was "OUT OF DISTRICT" for purposes of the San Rafael *Elementary* School District, City Schools' opposition was silent as to the attendance area for the San Rafael *High* School District. Based on the evidence in the administrative record, as well as information available to the public regarding the attendance area for the San Rafael High School District, Student's current physical address falls within the jurisdiction of the San Rafael High School District if he has matriculated from 8th to 9th grade.

Student's Matriculation

It is undisputed that during the 2014-2015 school year, Student was in the 8th grade at Davidson Middle School, which is part of the San Rafael *Elementary* School District.⁶ As to the 2015-2016 school year, it is unclear whether Student has been retained in the 8th grade as a middle school student or has matriculated to the 9th grade as a high school student.

Student's motion for stay put, filed on July 16, 2015, alleges at page 1, lines 9 to 12, that "Student was to attend the '2015 Bell Summer School Program' to be promoted to 9th grade due to the fact that he had performed poorly throughout the school year. However, the District [City Schools] canceled his summer program and expelled Student without a Manifestation Determination hearing or any Expulsion hearing." However, following the filing of Student's motion, Student's mother received a letter, dated July 24, 2015, from Terra Linda High School's Principal Lars Christensen, welcoming Student as an incoming freshman. District's opposition does not clarify whether Student has matriculated from 8th to 9th grade. Rather, City Schools unpersuasively contends that Student's physical address is within the city of Richmond, and based on that address his middle or high school of attendance is within the West Contra Costa Unified School District. If Student has matriculated to 9th grade, then the San Rafael High School District is responsible for implementing his last agreed upon and implemented IEP, dated January 28, 2015. If Student had not matriculated to 9th grade, then City Schools is not responsible for implementing his January 28, 2015 IEP, because his current residence falls within the jurisdiction of the Dixie Elementary School District.

⁶ According to San Rafael City Schools Street Listing and the declaration of Ms. Baer, dated July 23, 2015, Student's current physical address falls within the jurisdiction of the Dixie Elementary School District.

ORDER

If Student has matriculated to the 9th grade, then Student's motion for stay put is granted. Pursuant to his IEP dated January 28, 2015, Student shall receive 780 minutes per week of specialized academic instruction during the regular school year, consisting of two periods of reading intervention and one period of academic support taught by credentialed special education teachers as similar or comparable to the educational program while at Davidson Middle School.

IT IS SO ORDERED.

DATE: August 10, 2015

/s/

CAROLINE A. ZUK
Administrative Law Judge
Office of Administrative Hearings